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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 190

E. E. MORGAN & CO.,

Appellant,

vs.

STATE OF ARKANSAS, FOR THE USE AND BENEFIT OF PHILLIPS COUNTY.

APPEAL FROM THE SUPREME COURT OF THE STATE OF ARKANSAS.

PETITION FOR REHEARING.

WM. M. HALE,
Counsel for Appellant.

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E. E. MORGAN & CO.,

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vs.

STATE OF ARKANSAS, FOR THE USE AND BENEFIT OF PHILLIPS COUNTY,

Appellee.

PETITION OF APPELLANT FOR REHEARING OF MOTION TO DISMISS.

To the Honorable, the Supreme Court of the United States:

Now comes appellant by its undersigned counsel and petitions the Court to rehear and reconsider the motion to dismiss its appeal in the above-styled cause, which the Court, on October 13, 1941, upon a *per curiam* opinion, granted for want of a substantial Federal question.

The court, in its opinion, does not refer to the case of *Yearsley* v. *Ross Construction Co.*, 309 U. S. 18, wherein this Court subscribed to the concept, as we understand that decision, that a contractor with a construction contract with the Government to perform, is a governmental agent or instrumentality with respect to the object of the contract

and has the Government's rights and immunities with respect to its accomplishment in accordance with its contract; nor to the case of *Johnson* v. *Maryland*, 254 U. S. 51, wherein this Court, following *Osburn* v. *Bank*, 9 Wheaton 738, 868, held that one employed by the Government to operate a mail truck could not be compelled to qualify under the laws of Maryland to drive a motor vehicle and be fined for driving the truck without having done so, because it was not within a State's powers to require qualifications of a government agent for performance of government work.

A State seems to us certainly to be requiring a qualification of a Government agent when it requires a foreign corporation with a Government contract to perform therein, to qualify under its foreign corporation laws before doing its work, and such a requirement puts certain obstacles in the Government's way of performing work by contract therein. If a State may require domestication of such a contractor under pain of fine, it may also require a Federal contractor under pain of fine to stand an examination before its State Contractors' Licensing Board and obtain a license before performing, which requirements many states now have, and that would lead to more and some intolerable obstacles in the way of the Government doing work by contract through corporate agencies in many cases, especially in emergencies.

It is not apparent how the decision in the case at bar can be reconciled with the principles of the *Yearsley* case and the *Johnson* case.

We have been unable to find any case during all the years since the decision in the *Osburn* case in which it was held that a corporation with a Federal contract to perform had to obtain permission by domestication from the State in which the work was to be done, and we believe the bar at large has understood since that decision, especially since

the Supreme Court's declaration in *Pembina Silver Mining and Milling Co.* v. *Pa.*, 125 U. S. 181, that a corporation did not have to domesticate in another State in order to perform a Federal contract therein, and that the question, therefore, is one of general interest to the bar as well as of importance to contractors and the Government.

Wherefore, we respectfully submit that the court was in error and that the motion should be reheard and the cause be given further consideration.

Respectfully submitted,

WM. M. HALL,
Counsel for Appellant.

I, undersigned counsel for petitioner, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

WM. M. HALL,
Counsel for Appellant.